

Exhibit E



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March 20, 2019

Via Email

Jennifer Golinveaux
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Re: *Sony Music Entm't, et al. v. Cox Commc'ns, Inc., et al., No. 18-cv-650-LO-JFA*

Dear Jennifer:

We are writing to follow up on several discovery issues. We are available to confer on these issues tomorrow (Thursday) at 2 pm ET.

I. Documents relied on by BMG experts whom Plaintiffs have retained in this case.

As you know, Plaintiffs have retained four experts who testified in the BMG case—Barbara Frederiksen-Cross, Terrence McGarty, William Lehr, and Stephen Nowlis. On February 28, March 11 and March 15, I asked you to produce the documents referenced and/or relied on in those experts' BMG reports that had been produced from Cox's files. You have not responded to any of these requests.

Those documents are relevant to Plaintiffs' analyses on the same or similar issues that arose in the BMG case and must be provided here. They are responsive to Plaintiffs' requests and relevant to the issues in the case. The Court indicated that, once retained, Plaintiffs would have access to those experts' depositions, which include their reports, so they could prepare for impeachment, rebuttal and cross examination. The same rationale applies to the underlying documents cited in their reports. There is no basis for Cox's refusal to produce them and certainly no basis for Cox's failure to respond to Plaintiffs' inquiry for three weeks, particularly given the imminent expert deadlines and Cox's own unilateral demands for prompt responses to its queries.

We have identified some of the documents cited in the experts' reports but are still missing a number of them. Please produce the following documents immediately. If Cox refuses to do so,

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let us know promptly so that we can raise the issue with the Court this week as time is of the essence and your delay in responding is unduly prejudicial to Plaintiffs.

| | Document | BMG Bates | Cited in |
|----|--|------------------------|---------------------------------|
| 1 | Cox's responses to BMG's interrogatories, including supplemental responses | n/a | BMG Frederiksen-Cross Report(s) |
| 2 | (no title or title unknown) | COX_BMG00008052-8053 | BMG Frederiksen-Cross Report(s) |
| 3 | (no title or title unknown) | COX_BMG00010343-0351 | BMG Frederiksen-Cross Report(s) |
| 4 | Email chain RE: " DMCA@DigitalRightsCorp.com , settlement offers blacklisted" (Mar 11-14, 2011) | (unknown) | BMG Frederiksen-Cross Report(s) |
| 5 | Email from Cox Customer Safety [abuse@cox.net] RE: "2.25.2015 24030051 Notice of copyright infringements" (Feb 25, 2015) | (unknown) | BMG Frederiksen-Cross Report(s) |
| 6 | "Common Ports – TCP/UDP Port Numbers" | COX_BMG00007492 | McGarty Report(s) |
| 7 | "Copyother" | COX_BMG00003641-3662 | McGarty Report(s) |
| 8 | "Cox Customer Safety" | COX_BMG00001046-1059 | McGarty Report(s) |
| 9 | Email from abuse@cox.net , Subject: [1.13.2015 23574557], January 13, 2015 | COX_BMG000016467-478 | McGarty Report(s) |
| 10 | Email from Beck, Brent to CCI – Abuse Corporate, Subject: RE: CATS Wiki - Issues with specific complainants, October 25, 2010 | COX_BMG00003123-3125 | McGarty Report(s) |
| 11 | Email from Beck, Brent to Zabek, Jason, Subject: RE: starz dmca complaint volume, March 24, 2010 | COX_BMG00003454-3455 | McGarty Report(s) |
| 12 | Email from Mathews, Martin to Sikes, Joseph, Subject: RE: Business Software Alliance DMCA complaints, August 30, 2010 | COX_BMG00133386-3388 | McGarty Report(s) |
| 13 | Email from Zabek, Jason to Burns, Christopher, Subject: RE: abuse tickets, January 21, 2010 | COX_BMG00132563 | McGarty Report(s) |
| 14 | "Internet Speeds and Data Plans Information" | COX_BMG00140890 - 0891 | McGarty Report(s) |
| 15 | (no title or title unknown) | COX_BMG00001793 | McGarty Report(s) |
| 16 | (no title or title unknown) | COX_BMG00002310 | McGarty Report(s) |
| 17 | "April Network Activity Report," April 2015 | COX_BMG00199389-9403 | McGarty Report(s) |

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|----|--|-----------------------|-------------------|
| 18 | "CSI: The Customer Safety Initiative," June 8, 2011, | COX_BMG00004541-4553. | McGarty Report(s) |
| 19 | "Email from Beck, Brent to 'CCI – Abuse Corporate,' et al., Subject: new mediasentry source, (same addr though) – PeerMediaCopyright," February 19, 2010 | COX_BMG00008568. | McGarty Report(s) |
| 20 | "Email from Beck, Brent to Zabek, Jason, Subject: RE: CATS auto quarantine," August 25, 2011 | COX_BMG00176674-6675. | McGarty Report(s) |
| 21 | "Email from Burns, Christopher to Zabek, Jason, Subject: RE: abuse suspensions," January 6, 2010 | COX_BMG00188086-8087. | McGarty Report(s) |
| 22 | "Email from Carothers, Matt to Agcaoili, Phil and Sautter, Allen, Subject: EA board requests," March 22, 2011 | COX_BMG00183830-3831. | McGarty Report(s) |
| 23 | "Email from Sikes, Joseph to Beck, Brent, et al., Subject: RE: RE: Abuse meeting yesterday: Residential," January 15, 2010 | COX_BMG00179110-9112. | McGarty Report(s) |
| 24 | "Email from Sikes, Joseph to Bousman, Donald, et al., Subject: Security Suspension Daily Limit Increased from 300 to 500," October 3, 2013 | COX_BMG00219645 | McGarty Report(s) |
| 25 | "Residential Customer Safety" | COX_BMG00021333-1336 | McGarty Report(s) |
| 26 | (no title or title unknown) | COX_BMG00001026-1027 | McGarty Report(s) |
| 27 | (no title or title unknown) | COX_BMG00009555 | McGarty Report(s) |
| 28 | "Change Request - Data Usage Allowance Education: CR01 - Hard Walled Garden removal (Version 1.0)," March 23, 2012 | COX_BMG00008122 | Lehr Report(s) |
| 29 | "Education" | COX_BMG00009132 | Lehr Report(s) |
| 30 | Email from Campbell, Tim to Anjakos, Matt, et al., Subject: RE: "SD ticket count and info for your meeting," December 1, 2010 | COX_BMG00163994 | Lehr Report(s) |
| 31 | (Excel SS, no title or title unknown) | COX_BMG00219644 | Lehr Report(s) |
| 32 | "Bandwidth Allowances Job Aid," September 2, 2010 | COX_BMG00147710 | Lehr Report(s) |
| 33 | "Data Plan Verbiage: iNav, CATS, EBI" September 11, 2013 | COX_BMG00005390 | Lehr Report(s) |

II. Documents responsive to Request Nos. 37 and 13.

It appears that Cox has not produced numerous documents responsive to Plaintiffs' Document Request No. 37 (and/or No. 13). We asked for these documents back in November 2018. The documents we seek should be produced in this case, whether or not Cox produced them in the BMG case.

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Request No. 37 calls for production of “Marketing reports, plans, studies and consumer research related to how Cox’s customers use the internet, what benefits and attributes Cox’s customers wish to receive from the Internet, and the types of customers that use the Internet. This request specifically includes but is not limited to reports, analysis or surveys concerning use of your internet service to download or obtain music.”

Cox’s marketing department (in particular its Consumer Insights team) prepared and/or received responsive documents, including while working with several third parties, such as Nielsen, inCode, and Procera. We would like to have a meet-and-confer about the status of your collection and production of such responsive materials generally. In addition, we outline below some specific examples that we have identified in a close review of the Sidd Negretti deposition and exhibits thereto.

COX_SONY_00002316, *et seq.* (Negretti Deposition Exhibit 2) is a presentation entitled “Attitude and Usage Tracking” (June 2015). It was apparently the then-latest presentation in an ongoing study that Nielsen Consumer Insights provided to Cox. It involved a combination of online surveys (using a sample from the Harris Online Panel) and interviews. We have that presentation itself, but we should have also received the survey questions and data collection that underlay the study. Accordingly, if you have produced the survey questions and data, please identify the bates numbers. If you have not, do you agree to produce it? In addition, given that this was an ongoing project, with previous waves, please confirm that you will be providing the reports/plans/studies/research for the preceding waves.

COX_SONY_00002340, *et seq.* (Negretti Deposition Exhibit 3) is a document entitled “2012 Cox High-Speed Internet Service Residential Subscriber Tracking Survey Total Company Report” (June 2012). It analyzes the results of an online survey of Cox subscribers, including what they value in the Cox Internet service and their online activities, including as to downloading music. We have that presentation itself, but we should have also received the survey questions and data collection that underlay the study. Accordingly, if you have produced the survey questions and data, please identify the bates numbers. If you have not, do you agree to produce it? Given that this was an ongoing project, with similar reports for previous and subsequent years, please also confirm that you will be providing the same materials for those too.

COX_SONY00207223, *et seq.* (Negretti Deposition Exhibit 5) is a presentation entitled “Opportunities to Maximize Demand for Residential Internet Service” (August 2014). It contains analysis of an online survey of Cox subscribers and non-Cox subscribers. The document that Cox produced to us is illegible. Please produce a readable copy. In addition, we should have also received the survey questions and data collection that underlay the study. Accordingly, if you have produced the survey questions and data, please identify the bates numbers. If you have not, do you agree to produce it?

COX_SONY_00002646, *et seq.* (Negretti Deposition Exhibit 6) is a presentation entitled “Consumer Reactions to a Usage Based Pricing Program for CHSI” (November 10, 2014). It contains analysis of an online survey of Cox subscribers and non-Cox subscribers concerning, among other things, their data usage needs, including as to music. We have that presentation itself,

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but we should have also received the survey questions and data collection that underlay the study. Accordingly, if you have produced the survey questions and data, please identify the bates numbers. If you have not, do you agree to produce it?

COX_SONY_00002678, *et seq.* (Negretti Deposition Exhibit 7) is a presentation entitled “Music Listening Habits of Current HSI Customers.” It contains an analysis of an online survey of Cox subscribers, including concerning how they download from P2P or otherwise free of charge. We have that presentation itself, but we should have also received the survey questions and data collection that underlay the study. Accordingly, if you have produced the survey questions and data, please identify the bates numbers. If you have not, do you agree to produce it?

COX_SONY_00002760, *et seq.* (Negretti Deposition Exhibit 13) is a presentation entitled “Customer Broadband Usage Data Proposal” (February 2013). While we have the presentation itself, there is a reference to an “Implementation Plan” (page 43 of the document), including with collection of data from Procera and use of a partner/vendor for data analysis and value assessment. Have you produced such data and analysis? If so, please identify the bates numbers. If you have not, do you agree to produce it?

COX_SONY_00000563, *et seq.* (Negretti Deposition Exhibit 15) is a Statement of Work between inCode Telecom, a division of Ericsson Inc., and Cox. It is entitled “Cox High Speed Internet Broadband Usage Product” (January 2012). The project involved looking at Cox network usage data (with specific reference to Procera data/reports), as well as the data usage of ISPs that compete with Cox. Topics include consumption of data due to “P2P (BitTorrent)” and “Uploads & Downloads” for music. Have you produced the reports, studies and data utilized in connection with this Statement of Work? If so, please identify the bates numbers. If you have not, do you agree to produce it?

COX_SONY_00002827, *et seq.* (Negretti Deposition Exhibit 16) is a presentation entitled “Cox High Speed Internet Data Usage Assessment Mid-term Readout” (April 2, 2011). Among other topics, it addresses use of the Cox Internet service for P2P (BitTorrent) and music uploading and downloading. There are also references to competitor benchmarking and utilizing Procera data. Has Cox produced whatever reports, plans, studies or research precede this or come afterwards (and the underlying data)? If so, please identify the bates numbers. If you have not, do you agree to produce it?

Cox_BMG_00002840, *et seq.* (Negretti Deposition Exhibit 18) is a presentation entitled “Cox Consumption-Based Billing Study – Report of Findings – September 2011.” We have that presentation itself, but we should have also received the survey questions and data collection that underlay the study. Accordingly, if you have produced the survey questions and data, please identify the bates numbers. If you have not, do you agree to produce it? It appears that a company named Zanthus prepared the presentation for Cox.

Cox_SONY_00002918, *et seq.* (Negretti Deposition Exhibit 19) is a presentation entitled “Support Needs and Expectations of Internet Subscribers” (August 2014). It refers to an online

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survey done of roughly 1,000 Cox subscribers and a similar amount of non-Cox subscribers. We have that presentation itself, but we should have also received the survey questions and data collection that underlay the study. Accordingly, if you have produced the survey questions and data, please identify the bates numbers. If you have not, do you agree to produce it?

Finally, to avoid any confusion, some of the documents sought above, as well as documents from Procera specifically, are called for by Request No. 13. It called for production of “[a]ll documents concerning BitTorrent or other Peer-to-Peer file sharing, including but not limited to documents concerning the use of BitTorrent or other Peer-to-Peer file sharing by your Subscribers or Users; the prevalence of copyright infringement occurring through BitTorrent or other Peer-to-Peer file sharing systems; communications, memos, and studies discussing BitTorrent or Peer-to-Peer Internet traffic whether or not on the Cox network.”

III. Documents referenced in Cox’s production.

In addition to the document discussed above, Plaintiffs have identified additional documents from Cox’s productions and/or information in the BMG case record that appear to be responsive to Plaintiffs’ requests and relevant to Plaintiffs’ claims and must be produced at once.

Plaintiffs propounded several document requests that cover how Cox monitors, manages, and collects data on BitTorrent and other peer-to-peer internet traffic occurring over its network. Cox has failed to produce numerous documents that appear responsive to this issue. Cox also appears to have utilized a variety of reports regarding its subscribers’ online behavior. The collected data includes users’ bandwidth usage, including BitTorrent and peer-to-peer protocol usage, and results of subscriber surveys. While Cox has produced some of these reports, many appear missing. Other reports relating to Cox subscribers’ bandwidth usage are referenced in documents produced but have not themselves been produced. Reinforcing their clear relevance, many of these documents were produced in BMG. Please produce the below documents immediately.

| Document | BMG Bates | Notes |
|---|------------------|--|
| Email from S. Williams to J. Zabek et al. RE: “Procera Web Redirect Meeting Notes,” Feb 25, 2010 | COX_BMG00191815 | |
| “Procera, PacketLogic Production Guide, Release 12.1” | COX_BMG00143399 | |
| Cox High Speed Internet Service - Residential Subscriber Tracking Surveys for 2011, 2013, 2014 - Total Company Report | | Cox has produced this report for 2010 and 2012 but not 2011, 2013 or 2014. |
| “Market Usage Report” | COX_BMG00219133 | |
| “Total Usage to Peak Rate Report” | COX_BMG00219134 | |
| music :) ally "Survey finds ISPs Number One Choice of Music Provider" | COX_BMG00009325 | |
| “CHSI Customer Data Usage Education Update,” dated March 23, 2012 | COX_BMG00000686 | |

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| “Cox Customer Safety / Abuse Operations Services Business / Technical Requirements for new and existing products” | COX_BMG00000819 | |
| “BAE Usage Summary By Market for December 1st through December 31 st ” | COX_BMG00003082 | |
| “Month over Month Usage - Cox Summary Report” | | (listed in COX SONY 00004617) |
| “Bandwidth Usage and Enforcement Report” | | (listed in COX SONY 00004617) |
| “Data Usage and Product Combo Report” | | (listed in COX SONY 00004617) |
| “Heavy User Activity - Bill Day Changes” | | (listed in COX SONY 00004617) |
| “Heavy User Activity - Tier Changes” | | (listed in COX SONY 00004617) |
| “Lifetime Heavy User Report” | | (listed in COX SONY 00004617) |
| “Market Usage Report” | | (listed in COX SONY 00004617) |
| “Repeat Heavy User Report” | | (listed in COX SONY 00004617) |
| “Tier Usage by Market” | | (listed in COX SONY 00004617) |
| “Total Enforcement Counter Report” | | (listed in COX SONY 00004617) |
| “Total Usage to Peak Rate Report” | | (listed in COX SONY 00004617) |
| “Usage Trend Report Detailed View” | | (listed in COX SONY 00004617) |
| “Usage Trend Report Summary View” | | (listed in COX SONY 00004617) |
| “Notification Report” | | (listed in COX SONY 00004617) |
| “DMCA rules for reporting to Cox Report” | COX_SONY_00006080 | No metadata or family documents produced. |

IV. Other open issues Cox has not responded to or resolved

Cox has not yet responded to several other issues Plaintiffs have raised. We are concerned by Cox’s delay, particularly given the imminent expert deadlines and Cox’s late production of so many of these materials. We would prefer to avoid raising issues with the Court simply due to Cox’s failure to respond but absent timely responses, we may need to do so.

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- a. On March 8, I explained that we identified missing data in COX_SONY_00515540 (riaa_subjects_to_accounts.txt) and COX_SONY_00515539 (actions-history.csv). We have yet to receive a substantive response.
- b. On March 11, Plaintiffs requested that Cox supplement COX_SONY_00515540 (riaa_subjects_to_accounts.txt) to include all notices from Plaintiffs from 2012-2014, as well as the date and IP address associated with each notice. The Court has overruled Cox's date restriction multiple times and Cox agreed to produce date and IP addresses. We have yet to receive any response.
- c. On March 11, we reiterated Plaintiffs' concern about the timeliness of the revenue/billing information that the Court compelled on February 15. Our financial expert needs this information for his April 10 report and Cox's continued delay prejudices Plaintiffs. It is now March 20 and still Cox has not produced it. Please let us know whether Cox agrees to extend the date by which Plaintiffs must submit a financial expert report by one week, to April 17.
- d. On numerous occasions throughout February and March, we have explained the problem with Cox's proposed approach to resolving Plaintiffs' motion to compel relating to emails produced in the BMG case. Cox's failure to produce many of the documents listed in Section I of this letter (including but not limited to COX_BMG00003123-3125, COX_BMG00003454-3455, COX_BMG00133386-3388, COX_BMG00132563) confirms and compounds the problem with Cox's proposed approach. You also have not stated how Cox will address PX 1340 and other responsive documents that were not assigned the two issue codes you referenced, nor identified the other issue codes beyond the two referenced.

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Given the limited time remaining in discovery, along with upcoming expert deadlines, it is critical that we receive the documents and information requested quickly.

Sincerely,

/s/ Jeffrey Gould